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असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 2368]

नई दिल्ली, मंगलवार, दिसम्बर 11, 2012/अग्रहायण 20, 1934

No. 2368]

NEW DELHI, TUESDAY, DECEMBER 11, 2012/AGRAHAYANA 20, 1934

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 11 दिसम्बर, 2012

का.आ. 2869(अ).—केन्द्रीय सरकार ने विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खण्ड (ii) में तारीख 14 मई, 2012 को प्रकाशित अधिसूचना संख्यांक का.आ. 1062(अ) द्वारा लिबरेशन टाइगर्स ऑफ तमिल ईलम (जिसे इसमें इसके पश्चात् लिट्टे कहा गया है) को विधिविरुद्ध संगम घोषित किया था;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खण्ड (ii) में तारीख 6 जून, 2012 को प्रकाशित अधिसूचना संख्यांक का.आ. 1303(अ) द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात् उक्त अधिकरण कहा गया है) जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायमूर्ति श्री वी. के. जैन न्यायाधीश थे;

और केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस न्यायनिर्णयन के प्रयोजन के लिए क्या लिट्टे को विधिविरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, 14 मई, 2012 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और उक्त अधिकरण ने उक्त अधिनियम की धारा (4) की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 7 नवम्बर, 2012 को एक आदेश (जिसे इसमें इसके पश्चात् उक्त आदेश कहा गया है) किया था;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसरण में उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात् :—

(निर्णय अंग्रेजी अधिसूचना में छपा है)

[फा. सं. I-11034/1/2012-आई एस-1]

धर्मेन्द्र शर्मा, संयुक्त सचिव

**MINISTRY OF HOME AFFAIRS
NOTIFICATION**

New Delhi, the 11th December, 2012

S.O. 2869(E).— Whereas, the Central Government, in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the said Act) declared, *vide* notification of the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), number S.O.1062(E), dated the 14th May, 2012, the Liberation Tigers of Tamil Eelam (hereinafter referred to as LTTE) to be an unlawful association ;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of section 5 of the said Act, constituted, *vide* notification of the Government of India in the Ministry of Home Affairs published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (ii), number S.O.1303(E), dated the 6th June, 2012, the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Mr. Justice V.K. Jain, a Judge of the Delhi High Court;

And whereas the Central Government, in exercise of the powers conferred by sub-section (1) of the section 4 of the said Act, referred the said notification dated 14th May, 2012 to the said Tribunal on the 11th July, 2012 for the purpose of adjudicating whether or not there was sufficient cause for declaring the LTTE as unlawful association ;

And whereas the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, made an order (hereinafter referred to as the said order) on the 7th November, 2012 ;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely:-

TRIBUNAL UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

COURT NO. 20 HIGH COURT OF DELHI, NEW DELHI

In the matter of Liberation Tigers of Tamil Eelam (LTTE)

07.11.2012

Present: Mr. A.S. Chandhiok, ASG with Mr. Jatan Singh and Mr. Neeraj Chaudhari, Central Govt. Standing Counsel, with Mr. Gurpreet Parwanda and Ms. Monika Tyagi, Mr. Ravjot Singh and Mr. Tushar Singh, Advocates along with Mr. Ramesh Kumar Suman, Director, and

Mr. Narinder Kumar, Under Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.

Mr. Vaiko along with Mr. Dev Das, Mr. Asaithambi and Mr. G. Ananthaselvam.

Mr. M. Yogesh Kanna, Advocate for State of Tamil Nadu along with Mr. Abhash Kumar, IPS, Inspector General of Police, Internal Security, Chennai, and Mr. G. Sampath Kumar, IPS, Superintendent of Police, 'Q' Branch, CID, Chennai.

Mr. Anil Kumar Koushal, Registrar, Unlawful Activities (Prevention) Tribunal.

1. Vide Notification dated May 14, 2012 published in Part II Section 3-Sub-section(ii) of Gazette of India (Extraordinary), Central Government, in exercise of the powers conferred upon it by sub-section(1) and the proviso to sub-section(3) of Section 3 of the Unlawful Activities (Prevention) Act, 1967, declared the Liberation Tigers of Tamil Eelam (the LTTE) as an unlawful association and also directed that the notification shall, subject to any order that may be made under Section 4 of the said Act, have effect on and from the date of its publication in the official gazette.

2. Vide notification dated 6th June, 2012 published in Part II Section 3-Sub-section (ii), Central Government, in exercise of the powers conferred upon it by sub-section(1) of Section 5 of the Act, constituted "the Unlawful Activities(Prevention) Tribunal", consisting of me, for the purpose of adjudicating whether or not there is sufficient cause of declaring the Liberation Tigers of Tamil Eelam (the LTTE) as an 'unlawful association'.

3. Vide letter dated 11th July, 2012, Government of India, Ministry of Home Affairs, forwarded a resume of the facts on which its notification is based, including the aims and objectives of the LTTE, to the Tribunal.

The documents annexed to the resume comprise Constitution of the Peoples Front Liberation Tigers (PFLT), details of the cases registered by Government of Tamil Nadu and the arrest made therein, details of the evidence to show that LTTE is still having strong presence in Tamil Nadu and an illustrative list of the activities of the LTTE, which had come to notice since last proscription on the organization was imposed in May, 2010. Copies of notifications publishing the orders of the earlier Tribunals upholding were also annexed to the resume.

4. Section 4(2) of the Act provides that on receipt of reference, the Tribunal shall call upon the association affected by the notice in writing to show cause within 30 days from the date of such notice, why the association should not be declared unlawful. Accordingly, vide order dated 17th July, 2012, it was directed that the notice under Section 4(2) of the Act be issued to LTTE to show cause within 30 days as to why it be not declared unlawful within the meaning of the Act.

5. Rule 6 of the Unlawful Activities(Prevention) Rules, 1967 deals with service of notice issued under Section 4(2) of the Act and reads as under:-

"6. **Service of notice issued by the Tribunal-** Every notice referred to in sub-section (2) of Section 4 shall be served on the affected association in such manner as the Tribunal may think fit and all or any of the following modes may be followed by the Tribunal in effecting service of such notice, namely:-

- (a) by affixing a copy of the notice to some conspicuous part of the office, if any, of the association; or
- (b) by serving a copy of the notice, where possible, on the principal office bearers, if any, of the association, by registered post or otherwise; or
- (c) by proclaiming by beat of drum or by means of loudspeakers the contents of the notification in the area in which the activities of the association are ordinarily carried on."

Pursuant to the order dated July 17, 2012, the notice to LTTE was published on 24th July, 2012, in 47 editions of the newspapers mentioned in Annexure-1 to the affidavit dated 22.08.2012 by Shri Ramesh Kumar Suman, Director, Internal Security-I, Ministry of Home Affairs. The notice was also displayed on the notice boards of all Collectorates, Taluk Offices, Revenue Divisional Offices, Police Headquarters, District Police Offices and Police Stations in Tamil Nadu. The notice was also published in all Tamil Nadu editions of one English Daily newspaper "The New Indian Express" and one Tamil Daily, Dhina Thanthi (Daily Thanthi). A news item with respect to the service of notice was also broadcast in the news bulletin of All India Radio on 24.07.2012 and also telecast in prime bulletin of Doordarshan on the same date. The notice has also been uploaded on the official website www.mha.nic.in of Ministry of Home Affairs on 19.07.2012. The notice was also displayed on the website www.mha.nic.in which is the official website of Ministry of Home Affairs on 19.07.2012. The notice was also published in a Sri Lankan newspaper "The Island" on 17.8.2012 and a Sri Lankan Tamil Daily "Virakesari" on 14.8.2012. The notice issued by the Tribunal was translated into Tamil and broadcast on all the channels of All India Radio, Chennai from 26.07.2012 to 06.08.2012. Adequate publicity to the notice issued by the Tribunal was also given by All India Radio from 26.7.2012 to 28.7.2012. Since the last notice in terms of the order of the Tribunal was published on 17th August, 2012 the objections/reply could have been filed on or before 16th September, 2012.

6. Vide order dated 27th August, 2012, it was directed that the next sitting of the Tribunal would be held at Chennai on 28th September, 2012 and 29th September, 2012 at 11 AM. The Central Government and Government of Tamil Nadu were directed to give publicity in one Tamil newspaper published from Chennai, and in "Hindu" (English) published from New Delhi and Chennai as well as through media with respect to the date, time and place of the sitting of the Tribunal. In compliance of the directions of the Tribunal, the notice issued by the Registrar of the Tribunal, notifying the date, time and place for sitting of the Tribunal was published in "Hindu" (English) published from Chennai and Tamil newspaper "Thina Thanthi" on 25th September, 2012. The notice was telecast on Doordarshan in prime time bulletins at

8.15 PM and 10 PM and on 12 noon on 23rd September, 2012. The notice was also broadcast on All-India Radio in various news bulletins.

Section 4(3) provides for cause being shown not only by the banned association but also by any of its office bearers or members, the reply/objections, therefore, could be filed by LTTE as also by any of its office bearers or members. No objections/replies were, however, filed on or before 16th September, 2012 either by LTTE or any of its office bearers or members.

7. A petition under Section 4(3) of the Act was filed by one Mr. V.Sivanesan before the Tribunal, through Shri M.Radhakrishnan, Advocate, on 28th October, 2012. The petitioner claimed to be the coordinating Director of Switzerland Branch of European Political Sub Division of LTTE in Switzerland. The petition was dismissed vide order dated 28th October, 2012 holding that neither the petitioner had been authorized by LTTE to appear and act on its behalf nor had he been able to satisfy me, even prima facie, that he was either an office bearer or a member of LTTE. It was also noted in the course of the order dated 28th October, 2012 that despite the extensive publicity given to the notice issued by the Tribunal and sittings held at Chennai on 28th September, 2012 and 29th September, 2012 which were also attended by Mr. M.Radhakrishnan, Advocate, no appearance on behalf of LTTE or any of its office bearers or members had been filed at any time prior to 27th October, 2012. It was also noted that there was absolutely no explanation as to why the petitioner had not approached the Tribunal prior to 27th October, 2012 despite extensive publicity given to the notices issued by it as also to the notices with respect to the hearings which were scheduled at Chennai.

8. The notification dated 14.05.2012, *inter alia*, reads as under:-

"Whereas the Liberation Tigers of Tamil Eelam (hereinafter referred to as the LTTE), is an association based in Sri Lanka but having its supporters, sympathizers and agents in the territory of India;

And whereas, the LTTE's objective for a separate homeland (Tamil Eelam) for all Tamils threatens the sovereignty and territorial integrity of India, and amounts to cession and secession of a part of the territory of India from the Union and thus falls within the ambit of an unlawful activities;

And whereas, the LTTE, even after its military defeat in May 2009 in Sri Lanka, has not abandoned the concept of 'Eelam' and has been clandestinely working towards the 'Eelam' cause by undertaking fund raising and propaganda activities in Europe. The remnant LTTE leaders or cadres have also initiated efforts to regroup the scattered activists and resurrect the outfit locally and internationally;

And whereas, the separatist Tamil Chauvinist groups and pro-LTTE groups continue to foster a separatist tendency amongst the masses and enhance the support base for

LTTE in India and particularly in Tamil Nadu. It will ultimately have a strong disintegrating influence over the territorial integrity of India. Hence, the strong need continues to exist to control all such separatist activities by all possible lawful means;

And whereas, cases were registered under the Unlawful Activities (Prevention) Act, 1967 against LTTE, pro-LTTE elements and chauvinist groups since the last Notification No.SO 1090 (E), dated 14-05-2010, i.e., between May 2010 and February 2012, besides cases under the provisions of Explosive Substances Act 1908, Foreigners Act 1946, Indian Penal Code, etc.

And whereas, the Diaspora continue to spread through articles in the Internet portals, anti-India feeling amongst the Sri Lankan Tamils by holding the top Indian political leaders and bureaucrats responsible for the defeat of the LTTE.

Such propaganda through Internet, which remains continued, is likely to impact VVIP security adversely in India;

And whereas, for the reasons aforesaid, the Central Government is of the opinion that the LTTE is an unlawful association and there is a continuing strong need to control all such separatist activities by all possible means;

And whereas, the Central Government has the information that,—

- (i) the activities of the LTTE remnant cadres, dropouts, sympathizers, supporters, who have been traced out recently in the State of Tamil Nadu suggest that the cadres sent to Tamil Nadu would ultimately be utilized by the LTTE for unlawful activities;
- (ii) the activities of pro-LTTE organisation and individuals have come to notice of the Government of India that despite the ban in force, attempts have been made by these forces to extend their support to the LTTE;
- (iii) the LTTE leaders, operatives and supporters have been inimically opposed to India's policy on their organization and action of the State machinery in curbing their activities."

9. It is stated in the resume dated 11th July, 2012 that as per the constitution of People's Front Liberation Tigers(PFLT), which is stated to be the political front of LTTE, the objectives of the organization include

- (a) to fight for the right of self-determination of the Tamil and Muslims;

- (b) to protect and preserve the geographical identity and integrity of the traditional homelands of the Tamils and Muslims.

It is further stated in the resume that LTTE is an association based in Sri Lanka but having sympathizers, supporters, agents and operators in the territory of India and on account of linguistic, cultural, ethnic, historical and geographical affinity between the Tamils in India and those in Sri Lanka, the association has the capacity to make inroads and gain local support in Tamil Nadu and certain pockets of southern India. It is also alleged in the resume that LTTE continues to look at Tamil Nadu as a base for carrying out anti-India activities. It is further stated that the association has been assiduously cultivating the Tamil chauvinist elements who are inspired by the Tamil Eelam concept of a separate Tamil homeland, to the extent of secession from India. It is alleged that LTTE cadres started infiltrated in the State of Tamil Nadu, under the guise of refugees and the outfit continues to use Tamil Nadu as a base for securing its Logistical requirements. It is further stated that despite suffering a huge loss, at the hands of Sri Lankan forces in terms of elimination of its top leadership and loss of territorial control in the North of Sri Lanka, recent reports reveal that LTTE still has a strong presence in Tamil Nadu and remnant leaders/cadres/operatives are re-grouping for separate Tamil Eelam and wrecking revenge on the traitors (Government of India) and enemies (Government of Sri Lanka). It is further alleged that LTTE's objective for a separate homeland for Tamils is still its forefront agenda, which threatens the sovereignty and territorial integrity of India, amounting to attempt of secession of a part of the territory of India and thus falls within the ambit of unlawful activities. It is also alleged that in a recent incident Indian Embassy in Rome received a Closed Cover in its dak on 18th January, 2012 and the closed cover was found to contain two pen sized explosives without detonator. A photocopy of a paper supporting LTTE was also found inside this cover. It is also alleged that demonstrations were held and members of organizations pasted wall posters in Tamil Nadu urging establishment of Tamil Eelam and release of LTTE cadre in Tamil Nadu prison and recognition of LTTE. It is further stated that members of various pro-LTTE organizations released wall posters felicitating LTTE Leader Prabhakaran, on his birthday i.e. on 26th November, 2011, and also paid tribute to LTTE martyrs, claiming that Tamil Eelam was the thirst of Tamils. They also demanded support for Transnational Government of Tamil Eelam.

10. The following witnesses have been examined by Central Government and the Government of Tamil Nadu to satisfy the Tribunal that there is sufficient cause for declaring LTTE as unlawful association:-

- (i) PW-1 Ramesh Kumar Suman, Director Internal Security-I Division, Ministry of Home Affairs, Government of India, New Delhi.
- (ii) PW-2 G. Sampath Kumar, IPS, Superintendent of Police, 'Q' Branch, CID, Chennai
- (iii) PW-3 G. Rengasamy, Inspector of Police, 'Q' Branch CID, Trichy.
- (iv) PW-4 M.S. Bhaskar, Inspector of Police, Law and Order, Chengalpattu Town Police Station, Kanceepuram District.
- (v) PW-5 Rajeev Gandhi, Sub-Inspector of Police 'Q' Branch CID, Trichy
- (vi) PW-6 R. Rajbabu, Inspector of Police, 'Q' Branch, CID, Villupuram
- (vii) PW-7 V. Chandran, Inspector of Police, 'Q' Branch CID, Chennai City

- (viii) PW-8 R. Selvarani, Sub-Inspector of Police, Video Piracy Cell, CB/CID, St. Thomas Mount, Chennai
- (ix) PW-9 R. Venkateshwaran, Inspector of Police, District Crime Record Bureau, Sivagangai
- (x) PW-10 S.A. Seenivasan, Inspector of Police, Crime, B-I, North Beach PS, Chennai.

11. PW-3 G. Rengasamy, Inspector of Police, 'Q' Branch CID, Trichy, Tamil Nadu is the Investigating Officer of Crime No. 1/2010 registered under Sections 120(B) IPC r/w 10 (b) (ii), 13(1)(2) of Unlawful Activities (Prevention) Act, 1967, Section 5(a) of Explosive Substances Act, 1908 and Section 14(a)(b), 14A(b) of Foreigners Act, 1946. Three persons, namely, V. Chandrakanthan Nagarasa @ Satheesh @ Tamil @ Tamil Selvan, Subramaniyam Arulkulasingham @ Ramesh @ Myndhan @ Siva and Selvan @ Selvarasa, all Sri Lankan Tamils were arrested in the above-referred case. During the course of investigation, he interrogated accused Mr. Subramaniam (A-2) and Selvarasa (A-3) and recorded their statements Ex.PW-3/4 and PW-3/6 respectively. English version of those statements are Ex.3/5 and Ex.3/7 respectively. According to the witness, Accused No. 2 had told him that he and Accused No. 3 were members of LTTE cadre and that one Mr Seelan had asked him to meet accused Chandrakanthan Nagarasa (A-1), who also was from LTTE cadre. Accused No. 2 further told the witness that Seelan was a French National In-charge of LTTE cadre in France, who had come to Chennai and had met him in January, 2010. Accused No.2 further told the witness that he, along with Accused No. 3, had gone to Trichy, taking detonators with them and had met Accused No. 1 there. At Trichy, accused No. 1 took the detonators from them and kept the same in the bakery in which he was working. Accused No. 2 further told the witness that on 19.06.2010, he along with accused No. 3 had gone to Trichy, met accused No. 1 there and next day, they were to take those detonators illegally through Rameshwaram. The witness has identified his signature on the seizure memo Ex.PW-3/11. English version of that memo is Ex.PW-3/12. He has also stated accused No. 2 had told him that the detonators were being taken to Sri Lanka for being used by LTTE there, for committing blast.

Accused No. 3 told the witness that he was a member of LTTE cadre and while working with LTTE, he had come to know accused No. 2, who was working with the Intelligence Wing of the organization. Accused No. 3 further told the witness that Seelan, a French National introduced him to accused No. 1 in Trichy and he and accused No. 2 had given detonators to accused No. 1 in Trichy in January, 2010. Accused No. 3 also told the witness that on 19.06.2010, he, along with accused No. 2, had gone to Trichy to take detonators to Sri Lanka for being provided to LTTE and they were arrested, while taking the detonators to Sri Lanka. On questioning by the Tribunal, the witness stated that Sri Lankan passport of accused No. 1 was seized from him though no passport or other valid travel document was found with accused No. 2 and 3 who had entered India illegally. He also stated that the accused had told him that the detonators had been procured from various quarries though the particulars of those quarries were not given to him. The detonators, according to the witness, are used for carrying blast at quarry sites for mining purposes.

12. PW-5 Rajeev Gandhi, Sub-Inspector of Police 'Q' Branch CID, Trichy, is the police officer on whose complaint, Crime No. 1/2010 was registered. He has stated

that on 20.06.2010, he received a reliable information that some Sri Lankan Tamils were engaged in smuggling of explosive materials to Sri Lanka at Sri Sai Nagar near K.K. Nagar. He reached that place and at about 10.45 PM, accused Chandrakanthan Nagarasa came there walking. He had a travel bag with him. He attempted to escape on seeing the police party, but, was caught and interrogated in the presence of two independent witnesses. He then made a statement which was recorded in the presence of two witnesses. In the statement, the accused told him that he was a citizen of Sri Lanka, a member of LTTE cadre, had undergone arms training and was attached to the Intelligence Wing of LTTE. After war in Sri Lanka, he came to Chennai by Air on a Sri Lankan passport and met Seelan, In-charge of LTTE in France. The accused further told the witness that in February, 2010 accused Selvarasa @ Selvan came with another LTTE cadre, namely, Ramesh and met him at NSK Ceylon Bakery in Trichy. They decided to procure explosives for utilizing the same in Sri Lanka. In February, 2010, Ramesh and Selvarasa brought three bags of explosives and kept at the bakery. On 20.06.2010, Ramesh and Selvarasa came to the bakery and took one bag each of explosives. The third bag containing explosive was taken by accused Nagarasa. He was arrested on the way and 1500 ordinary detonators and 200 electric detonators were seized from him. The confessional statement recorded by this witness is Ex.PW-3/8 and its English version is Ex.PW-3/9. The confessional statement also bears signatures of Village Administration Officer Tr. Kanagaraj and Village Assistant Thiru Kaliyamoorthy, in whose presence it was recorded. The witness has also identified his signatures on the Seizure Memo Ex.PW3/11 which also bears the signatures of the Village Administration Officer and Village Assistant. The English version of the Seizure Memo is Ex.PW-3/2. During questioning by the Tribunal, he stated that though no document had been recovered from accused No. 1, who had admitted that he was a Sri Lankan citizen, who had come to India to smuggle detonators to Sri Lanka, for use of LTTE.

13. PW-6 R.Rajbabu, Inspector of Police, 'Q' Branch, CID, Villupuram has stated that on 12.06.2010 at about 2.15 AM, the Engine Guard of Salem Express, which was passing near Perani railway station on Trichy-Chennai Railway Line, felt some unusual sound/jerk on the railway track and informed the station master, who, in turn, informed the Engine driver of Rock Fort Express which was proceeding towards Chennai. The driver of that train received a caution order at Mundiampakkam railway station and slowed down the speed of the train at Perani signal. He noticed a gap of 2.5 metre broken rail and a crater of 3 feet depth on the railway track. On the place of occurrence, one pamphlet was also found. A case in this regard was registered vide Crime No. 259/2010 under Section 307 IPC, Section 3 of Explosive Substances Act, 1908, Section 4 of PPD Act, 1984, Section 3 r/w 13(1) of Unlawful Activities (Prevention) Act, 2004 and 150 (2)(b), 151(1)(2) of Railways Act, 1989. The pamphlet which he had seized from the spot is Ex.PW-6/4 and the English translation of the pamphlet has been given in para 3 of the affidavit of the witness. During his examination before the Tribunal, the witness stated that the spot referred in para 3 of the affidavit was visited by him and a gap of 2.5 metre broken rail and a crater of 3 feet depth on the railway track was noticed by him.

The English translation of the pamphlet found at the railway track as given in para 3 of the affidavit of the witness reads as under:-

US64 4012-3

“Indian Government!

We condemn the visit of blood thirst wolf Rajapakshe to India and also condemn Indian Government and Tamil Nadu Government for supporting the annihilation of Tamil race. O Tamil— If we still keep silent they can't understand our silent sufferings.

by His Excellency Prabhakaran's younger brothers.”

14. PW-10 S.A. Seenivasan, Inspector of Police, Crime, B-I, North Beach PS, Chennai has stated that on 14.08.2011 at about 09.00 AM when he was on patrol along with other police officials, two persons, namely, Jesuraja and Ganesan were found standing near Anakaputhur bus stand in a suspicious manner and were questioned. Jesuraja was found in possession of three gelatin sticks and about 10 metre of wire which he was carrying in a bag. Ganesan was found carrying EVEREADY batteries and three detonators, which he had kept in the bag being carried by him. Those articles were seized and a case under Section 5 of Explosive Substances Act, 1908 was registered. After obtaining police remand of those two persons, he recorded confessional statement of accused Jesuraja in the presence of Village Administrative Officers Mr. Ambrose and Mr. Kupuswamy. Pursuant to the statement made by Jesuraja, he went to his residence and seized the articles mentioned in para 4 of his affidavit vide memo Ex.PW-10/5. The confessional statement of Jesuraja recorded by the witness is Ex.PW-7/4, whereas its English version is Ex.PW-7/5. According to the witness, the accused Jesuraja had, *inter alia*, told him that they were keeping detonators and batteries to damage public properties, attract the attention of the Central and State Governments, organize a bomb blast in Tamil Nadu and create chaos and confusion in the State, to show their anger against the Central and State Government on killing of Tamil people and LTTE cadres in Sri Lanka. The accused also told him that he was a member of Tamil Nadu Liberation Front and according to the witness, there is linkage between Tamil Nadu Liberation Front and LTTE since the cadres of Tamil Nadu Liberation Army were trained by LTTE. The accused also told him that he was a member of Tamil Nadu Liberation Army. According to the witness, there is a linkage between LTTE and Tamil Nadu Liberation Army since the cadre of Tamil Nadu Liberation Army was trained by LTTE.

15. PW-8 R. Selvarani, Sub-Inspector of Police, Video Piracy Cell, CBCID, St. Thomas Mount, Chennai has stated that permission was granted to Thiru A.C. Raja, Headquarters Secretary, Naam Thamizhar Katchi, to hold demonstration between 10.30 hrs and 11.30 hrs on 10.07.2010 in front of District Collector Office, Chennai. She has further stated that at about 10.00 AM on that day, about 250 persons carrying flags and banners embedded with image/portrait of LTTE leader Prabhakaran in their hands and wearing the shirts and vests imprinted with his photograph of LTTE assembled in front of District Collector Office, Chennai. Thiru Seeman, Chief Coordinator of Naam Thamizhar Katchi gave a speech alleging therein that Indian Army had gone to Sri Lanka, committed atrocities and indulged in sexual assaults against Tamil womenfolk living there and thereby committed ethnic carnage. Thiru Seeman supported the banned organization LTTE and threatened that if Tamil fishermen are attacked, no Sinhalese student studying in this land can return back alive to Sri Lanka. The proceedings of the demonstration were got

videographed and the special report submitted by the witness with respect to the demonstration is Ex.PW-8/2. English version of her report is Ex.PW-8/3, whereas the CD containing the speech delivered by Thiru Seeman is Ex.PW-8/4.

16. PW-2 G. Sampath Kumar, IPS, Superintendent of Police, 'Q' Branch, CID, Chennai, has proved the constitution of Peoples' Front of Liberation Tigers (PFLT), Ex.PW-2/4 and has stated that PFLT is the political wing of LTTE. He has also proved the map Ex.PW-2/8 which includes some part of India as Greater Tamil Nadu and the article Ex.PW-2/7 on Tamil Nadu Liberation Front (TNLF), which has been downloaded from a website which is still alive. This witness has filed two volumes of documents along with his affidavit. The first volume filed with his affidavit is Ex.PW-2/2, whereas the second volume is Ex.PW-2/3. Volume 2, according to the witness, comprises the cases registered against LTTE members, judgments delivered in those cases and related matters.

17. PW-1 Ramesh Kumar Suman is Director, Internal Security-I Division, Ministry of Home Affairs, Government of India, New Delhi, who has been dealing with this matter. He has filed 06 volumes of documents which are Ex. PW-1/2 to PW-1/6. The volume Ex. PW-1/5 contains secret documents for the perusal of the Tribunal and the Central Government is of the view that it would not be in the public interest to disclose the documents contained in volume 5.

He has stated, on the basis of information and material received from the State of Tamil Nadu and various intelligence agencies, that though LTTE is based in Sri Lanka, it has sympathizers, promoters, agents and operators carrying on various activities in India as well and it continues to look at Tamil Nadu as a base for carrying out anti-India activities. According to him, the Central Government has information which shows that LTTE continues to practice violent, disruptive and unlawful activities, which are prejudicial to the territorial integrity and sovereignty of India. Its activities continue to pose threat and are detrimental to the sovereignty and territorial integrity of India. He has further stated that even after its military defeat in Sri Lanka, LTTE has not abandoned the concept of Eelam and has been clandestinely working towards the said cause through various activities and the LTTE cadres have also initiated efforts to regroup them and resurrect the organization, locally and internationally. He has stated that the information received by the Government of India indicates that LTTE has been nursing strong grudge against India due to (i) the ban imposed in India on the organization; (ii) sharing of intelligence by India with Sri Lankan agencies; (iii) grant of military hardware and training to Sri Lankan Security Forces by India and (iv) India's perceived silence over air attacks carried over by Sri Lankan Air Forces on the alleged civilian targets in Northern Sri Lanka. He has claimed that the remains of LTTE continue to remain in force amongst expatriate Tamils of India, sections of these elements subscribe to a strong anti-India policy and they are also trying to reach out to militant groups from maoist to Sikhs, operating against India, as a part of their desire for revenge against India. He has also stated that though the struggle of LTTE is against Government of Sri Lanka, its larger and ultimate objective is to form a larger Tamil country, including some areas of India where Tamils are living, the Tamil Eelam concept still remains a goal amongst pro-LTTE organizations and in spite of the ban on the organization being imposed, the remnant cadres/agents/sympathizers continue to arrive in Tamil Nadu in the guise of refugees of Sri Lanka and if their activities are not curbed, it would cause grave

threat to the sovereignty and territorial integrity of India and security of various high dignitaries.

18. The expression "Unlawful Association" has been defined as under in Section 2(p) of the Act:-

"Unlawful Association" means any association-

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- (ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity;

Provided that nothing contained in sub-clause shall apply to the State of Jammu and Kashmir."

The expression "Unlawful Activity" has been defined as under in Section 2(o) of the Act:-

"Unlawful Activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;"

19. The expressions "Unlawful Activity" and "Unlawful Association" as contained in the Act came up for consideration before the Supreme Court in **Jamaat-E-Islami Hind v. Union of India** (1995) 1 SCC 428 and the following view was taken:-

"An "unlawful activity", defined in clause (f), means "any action taken" of the kind specified therein and having the consequence mentioned. In other words, "any action taken"

by such individual or association constituting an "unlawful activity" must have the potential specified in the definition. Determination of these facts constitutes the foundation for declaring an association to be unlawful under sub-section (1) of Section 3 of the Act. Clause (g) defines "unlawful association" with reference to "unlawful activity" in sub-clause (i) thereof, and in sub-clause (ii) the reference is to the offences punishable under Section 153-A or Section 153-B of the Indian Penal Code. In sub-clause (ii), the objective determination is with reference to the offences punishable under Section 153-A or Section 153-B of the IPC while in sub-clause (i) it is with reference to "unlawful activity" as defined in clause (f). These definitions make it clear that the determination of the question whether any association is, or has become, an unlawful association to justify such declaration under sub-section (1) of Section 3 must be based on an objective decision; and the determination should be that "any action taken" by such association constitutes an "unlawful activity" which is the object of the association or the object is any activity punishable under Section 153-A or Section 153-B IPC. It is only on the conclusion so reached in an objective determination that a declaration can be made by the Central Government under sub-section (1) of Section.

20. As regards the nature of inquiry contemplated by Section 4(3) of the Act, Supreme Court in Jamaat-E-Islami Hind (supra) held as under:-

"11.....The nature of inquiry contemplated by the Tribunal requires it to weigh the material on which the notification under sub-section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context.

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17. The reference to the Tribunal is for the purpose of adjudicating whether or not there is sufficient cause for declaring the Association unlawful. Obviously, the purpose is to obtain a judicial confirmation of the existence of sufficient cause to support the action taken. The confirmation is by a sitting High Court Judge after a judicial scrutiny of the kind indicated. This being the nature of inquiry and the purpose for which it is conducted, the materials on which the adjudication is to be made with opportunity to show cause given to the Association, must be substantially in consonance with the materials required to support a judicial determination."

In **State of Madras v. V.G. Row AIR 1952 SC 196**, Supreme Court, *inter alia*, held as under:-

"These grounds, taken by themselves, are factual and not anticipatory or based on suspicion. An association is allowed to be declared unlawful because it 'constitutes' a danger or 'has interfered or interferes' with the maintenance of public order or 'has such interference for its object', etc. *The factual existence of these grounds is amenable to objective determination by the court.*

(emphasis supplied)"

Holding that the test of factual existence of grounds, amenable to objective determination by the Court, for judging the reasonableness of restrictions placed on the right conferred by Article (1) to form associations, is equally applicable in the scheme of Unlawful Activities (Prevention) Act, 1967, Supreme Court in **Jamaat-E-Islami Hind (supra)**, *inter alia*, held as under:

"19.....It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the association to be unlawful under the Act. A different construction to equate the requirement of this Act with mere subjective satisfaction of the Central Government, when the power to declare an association to be unlawful depends on the factual existence of the grounds which are amenable to objective determination, would result in denuding the process of adjudication by the Tribunal of the entire meaning and content of the expression "adjudication."

Referring to the concept of natural justice, which is implicit in such adjudication, the Apex Court, *inter alia*, observed as under:-

"21. To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence

relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the ipse dixit of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence or material in respect of which the Central Government claims non-disclosure on the ground of public interest.

22. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that nondisclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to

accept, without abdicating its function by merely acting on the ipse dixit of the Central Government.

25. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken.

26. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself."

21. Two questions primarily arise for consideration of the Tribunal, the first question being as to whether LTTE, as an organization stands wholly decimated or continues to survive despite the military setback suffered in by it in Sri Lanka and the second being as to whether there was cogent and relevant material before the Central Government, justifying formation, of an opinion that this is an unlawful association within the meaning of Section 2(p) of the Act.

LTTE Continues To Survive

22. It has come in the deposition of PW3- G.Rengasamy and PW5 Rajiv Gandhi that three members of LTTE cadre who procured ammunition in India for use of LTTE in Sri Lanka, were arrested on 20th June, 2010 along with the ammunition. They admitted being members of LTTE and procuring ammunition for use by it, albeit in Sri Lanka. This happened after LTTE was banned vide notification dated 14th May, 2010.

It has also come in the deposition of PW-10 –S.A. Seenivasan that as late as in 14th August, 2011, two members of TNLA, cadre of which are trained by LTTE, were arrested with explosives near Anakaputhur bus stand in Tamil Nadu. The explosives were meant for blast in Tamil Nadu, to register protest, inter alia, against killing of LTTE cadre in Sri Lanka, which clearly indicates a connection between LTTE and TNLA.

PW-6 – R.Rajbabu found a gap in broken rail line and a crater on railway Track, on Trichy Chennai Rail line on 12th June, 2010, after LTTE was banned vide notification dated 14th May, 2010. The pamphlet found on the spot seems to have emanated from LTTE cadres.

The deposition of PW-8 – R.Selvarani shows that on 10th July, 2010, after ban on LTTE on 14th May, 2010, a large number of persons, carrying flags and banners and wearing vests and shirts, depicting photograph of LTTE Chief Prabhakaran on them, held a demonstration opposite office of the Collector in Chennai. This evidence clearly shows that LTTE does not stand decimated and its cadres continue to operate in the State of Tamil Nadu, though their strength may have substantially dwindled, on account of the setbacks suffered by it.

Link Between LTTE and PFLT

23. It is stated in the affidavit of PW-1 Mr. Ramesh Kumar Suman that LTTE was established in 1974 under the name of "Liberation Tigers" and changed its name to "Liberation Tigers of Tamil Eelam(LTTE) in the year 1976 with Mr. V.Prabhakaran as its Military Commander and it has declared "Liberation of the Traditional Homeland of Tamils and establishment of an independent sovereign, socialist State of Tamil Nadu" as its ultimate objective. He maintains in his affidavit that despite struggle of LTTE being against Government of Sri Lanka, the larger objective of the organization is to form a larger Tamil country, which would include some areas of India where Tamils are living and if the ban on LTTE is lifted, it is likely to be highly detrimental to be sovereignty and territorial integrity of India.

In his affidavit by way of evidence, PW-2 Mr. G.Sampath Kumar has stated that LTTE had given to itself a Constitution, a copy of which is annexure 'B' (Volume-II of his affidavit) and that People's Front of Liberation Tigers(PFLT) is a political front of LTTE, which was formed on 5th May, 1976. He has further stated that Tamil National Retrieval Tribunal (TNRT) is an underground organization which was formed at the instance of LTTE and the objective of this outfit is to fight for an independent homeland for Tamils, which would eventually extend the boundaries of Tamil Nadu to form a Tamil Nation including what now comprises Tamil Nadu and certain areas in Sri Lanka. According to him, this organization has close ties with LTTE. He has

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further stated that another organization namely Tamil Nadu Liberation Army(TNLA) also has close ties with LTTE, the objective of TNLA is secession of Tamil Nadu from the Indian Union and the organization professes armed struggle as the only way to achieve independence. The objective of TNLA, according to the witness, which draws inspiration from LTTE, is also secession of Tamil Nadu from Indian Union. He has also stated that another underground organization Tamil Nadu Liberation Front(TNLF), which is a front organization of TNLA, has exhibited, on internet, a map of Greater Tamil Nadu, which encompasses some areas of Sri Lanka, Tamil Nadu, Kerala, Lakshdweep and Maldives. The map is annexure P-3 to the affidavit of the witness.

24. There is no rebuttal to the deposition of PW-2 – Shri G. Sampath Kumar that PFLT is an organization formed by LTTE and is its political wing. LTTE has not come forward to file any objection/reply/written statement, despite extensive publicity given to the setting up of the Tribunal and the hearings scheduled before it, through print as well as electronic media. Therefore, the evidence produced by the Central Government and Government of Tamil Nadu remains practically un rebutted, unchallenged and undisputed. In fact, even Mr. Vaiko admitted that PFLT was at one time formed by LTTE. LTTE has not come forward to claim that it has no connection with PFLT and it does not subscribe to the Constitution of this organization filed by the Government. A perusal of Gazette notification dated 16th December, 1998 publishing the order dated 13th November, 1998 passed by an earlier Tribunal under Section 4(3) of the Act would show that during the proceedings before the Tribunal LTTE was represented by Mr. N.Chandrashekhra, Advocate. It further shows that the Constitution of PFLT, which has been filed before this Tribunal, was also filed before that Tribunal and reliance was placed upon it to show that the larger objective of LTTE was to include Tamil areas of India as a part of Tamil Eelam, thereby posing a real and serious threat to the sovereignty and integrity of India. It further shows that during cross-examination by Mr. Chandrashekhra, counsel for the LTTE, the witness deposing on behalf of Government stated that in the opinion of Government, Tamil Homelands, mentioned in the Constitution of PFLT, meant the inclusion of Tamil speaking areas of the Indian Union as well in the Tamil Eelams, though the same was not specifically mentioned in the Constitution of PFLT. The witness further stated that the inference which could be drawn from the objectives of the organization, as stated in its Constitution, was that its larger objectives, given geographical continuity and ethnic affinity, would include Tamil areas of India as well. The order passed by the Tribunal would show that the counsel representing LTTE did not dispute the assertion of the Government that PFLT was a wing of LTTE itself and that the objectives of this organization are not the objectives of LTTE.

A perusal of the Gazette Notification dated December 7, 2000, publishing the report of the next Tribunal dated 13th November, 2000 would show that during the course of hearing LTTE was represented by the same counsel Mr. N.Chandrashekhra and again reliance was placed by the Government on the abovereferred Constitution and the inference drawn from it with respect to the ultimate objective of the LTTE. The order shows that the witness of the Government stated before the Tribunal that Government of India had taken note of the Constitution of the LTTE where it stated that the objective and ideology of the LTTE was to protect and preserve the geographical identity and integrity of the traditional homelands of Tamils and Muslims. He maintained that in the opinion of the

Government 'Tamil Homeland' mentioned in the Constitution of PFLT meant the inclusion of the Tamil speaking areas of the Indian Union as well as the Tamil Eelam. Though Mr. Chandreshekhara claimed that traditional homelands of Tamils and Muslims mentioned in the Constitution meant the homeland only within the territory of Sri Lanka and that Government of India had not correctly understood the notion of Tamil Eelam, he did not claim that PFLT was an organization unconnected with LTTE. He did not say that there was no link between LTTE and PFLT and did not claim that LTTE did not endorse to the objectives of PFLT, as stated in its Constitution. In these circumstances, it is difficult to say that there is no material before this Tribunal to show that PFLT is an arm of LTTE itself.

25. The Tribunal which passed the orders on 13th November, 1998 and 13th November, 2000 did not accept the contention that LTTE did not aim to include any part of India to Tamil Eelam or that this was not the objective of the LTTE to form a homeland for all Tamils, including the parts of India in that homeland. The Tribunal thereby accepted the interpretation given by the Government to the objectives contained in the Constitution of PFLT which was treated to be the Constitution of LTTE. The Tribunal did not accept the contention of Mr. Chandreshekhara that the traditional homelands of Tamils and Muslims mentioned in the Constitution meant a homeland only within the Territory of Sri Lanka.

26. The Tribunal which upheld the ban, imposed vide Notification dated 14.5.1998, while confirming the declaration made by the Central Government, *inter alia*, held as under:

".....Though, the immediate struggle of the LTTE is against the Government of Sri Lanka for the establishment of Tamil Eelam in the North East provinces of Sri Lanka, its larger and ultimate objective is to form a larger Tamil country including areas of India where the Tamils live and thus pose a threat to the sovereignty and territorial integrity of India...."

A perusal of the order passed by the Tribunal which upheld the Notification dated 14.5.2000 declaring LTTE to be an unlawful organization shows that the order banning the organization was challenged, *inter alia*, on the following grounds:

- (i) that the LTTE is a political organization representing the Tamil people living in Sri Lanka who are being subjected to genocidal oppression deprived of basic human rights and systematically discriminated against and persecuted as a people by Sri Lanka Government dominated by the Sinhala people.....
LTTE neither disrupts nor presents any threat to the sovereignty and territorial integrity of India and is not an unlawful association as defined under the laws of India and other international laws;
- (ii) That the LTTE has no connection with any organization that engaged in unlawful activities in India;
- (iii) That the LTTE's activities do not fall within the ambit of an unlawful activity....."

It was also submitted before the Tribunal that the Eelam meant only Ceylon (Sri Lanka) and Tamil Eelam meant the Northern & Eastern provinces of Sri Lanka, where the majority of Tamil population lives. This was also the contention of the counsel representing the LTTE that neither Tamil Nadu nor any other part of the world, where the Tamil lived, had ever been referred to as 'Eelam', either in the ancient literary account or in the Government records. It was also submitted that there was no evidence to show that the LTTE wanted to create Tamil Eelam including parts of India. Rejecting the contention, the Tribunal, *inter alia*, held as under:

".....the larger objective of the LTTE and its supporters is to fight for a separate homeland for Tamils not only in the northern and eastern parts of Sri Lanka but even also in India, thus affecting the sovereignty and territorial integrity of India and Tamil Nadu.

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.....Though the immediate struggle of the LTTE is against the Government of Sri Lanka for the establishment of Tamil Eelam in the north east provinces of Sri Lanka, its larger and ultimate objective is to be form a larger Tamil country including areas of India where Tamil lives and this pose a grave threat to the sovereignty and territorial integrity of India.

Whether LTTE can be said to be an unlawful association:

27. As noted earlier, one of the aims and objectives of PFLT is to protect and preserve the geographical identity and integrity of the 'traditional homelands of Tamils and Muslims'. The contention of the learned Additional Solicitor General is that it is the State of Tamil Nadu which has traditionally been considered to be the homeland of Tamil and therefore, the ultimate objective of LTTE is to integrate traditional Tamil areas of India with the Tamil speaking areas of Sri Lanka and such an act constitutes 'unlawful activity' within the meaning of Section 2(o) of the Act, being intended to bring about cession of a part of the territory of India. Since LTTE has not come forward to appear before this Tribunal to contest the stand taken by the Government with respect to the aims and objectives of LTTE/PFLT and the previous Tribunals have not accepted the contention of the organization that it does not aim to include parts of India to Tamil Eelam, I see no reason to reject the interpretation given by the Government to the objectives set out in the Constitution of PFLT, which is a part and parcel of LTTE. As rightly submitted by the learned Additional Solicitor General, nothing prevented LTTE from coming forward to the Tribunal and take a categorical stand that it does not subscribe to any such objective which is aimed at cession of a part of the territory of India and does not advocate integration of one or more parts of India with the Tamil speaking parts of Sri Lanka. But, in the absence of any rebuttal from LTTE, there is no good ground to reject the unrebutted and

uncontroverted case of the Government with respect to the abovereferred aim and objective of LTTE.

Though no map, indicating the areas comprised in the traditional homeland of Tamils and Muslims, referred the constitution of PFLT, has been placed on record by the Government. A copy of the map of Greater Tamil Nadu published by Tamil Nadu Liberation Front has been filed. A perusal of the map would show that parts of State of Tamil Nadu have been shown as part of "Greater Tamil Nadu" in this map. The demands of TNLF, as displayed on the home page of the organization comprise 'secession of Tamil Nadu from the artificial so-called Indian Union', 'the Re-Unification of Eelam with liberated Tamil Nadu', 'the Re-Unification of Kerala with liberated Tamil Nadu' and 'the Restoration of lost lands to Greater Tamil Nadu, including the Kolar Gold Fields, Malnadu, Lakshadweep Islands, Maledives, and Mauritius'. It has come in the deposition of PW-2 Mr. G. Sampath Kumar that TNLF is an underground front organization of TNLA, the objective of which is cession of Tamil Nadu from Indian Union and this organization has close ties with LTTE. It has also come in the deposition of PW-10 that the cadre of TNLF and TNLA are trained by LTTE. This part of his statement seems to be based upon the information gathered by the witness from the accused persons, who were arrested in the case investigated by him and, therefore, cannot be said to be without any basis. The submission of learned Additional Solicitor General was that the areas of Tamil Nadu, shown in the map published by TNLF, are the areas which have been described as traditional homeland of Tamils and Muslims in the constitution of PFLT. Since LTTE has not come forward to controvert the case of the Government in this regard and to say that it has no connection with TNLF and TNLA, does not subscribe to the concept of Greater Tamil Nadu espoused by TNLF in the map published by it and does not support the demands of TNLF, as displayed on the internet, it will be difficult to reject the case set up by the Government in this regard. This very map was relied upon by the Government before the earlier Tribunals in support of its contention that LTTE subscribed to the cessionist demands of TNLF as displayed on the website. In the years 1998 and 2000, the Tribunals rejected the plea of LTTE that the interpretation of the Government with respect to its objectives was incorrect and upheld the ban on the organization. But, the order passed by the Tribunal was not challenged by LTTE by way of judicial proceedings and the organization continued to be banned. This indicates that the view taken by the previous Tribunals came to be accepted by LTTE. The learned Additional Solicitor General, therefore, is right in contending that the orders of the previous tribunals, not accepting the stand taken by LTTE in this regard, in the years 1998 and 2000 by itself was a relevant material available to the Government, to continue the ban vide notification dated 14th May, 2012. In fact, this very map has been relied upon by the Government before other Tribunals as well, and accepted by them by upholding the ban.

Since one of the objectives of LTTE is cession a part of the territory of India, it becomes an 'unlawful association' within the meaning of Section 2(p) of the Act and the Central Government, therefore, had sufficient cause for declaring the LTTE to be an unlawful association on this ground alone.

28. It has come in the deposition of PW-8 R. Selvarani and her report Ex.PW-8/2 that about 250 persons carrying flags and banners having image/portrait of LTTE leader Prabhakaran embedded on them in their hands and wearing shirts and vests

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imprinted with his photograph, had demonstrated in front of District Collector's Office, in Chennai on 10.07.2012. The report further shows that Thiru Seeman, Chief Coordinator of Naam Thamizhar Katchi had delivered a speech in that gathering alleging that Indian Army had gone to Sri Lanka, committed atrocities and indulged in sexual assaults against Tamil womenfolk living there and thereby committed ethnic carnage. The demonstration was got videographed and the VCD of the same is Ex. PW-8/4. The fact that the persons, who participated in the demonstration, were carrying flags and banners embedded with images of LTTE leader Mr Prabhakaran and were wearing shirts and vests having his photograph printed on them, indicates that the above-referred demonstration was organized by LTTE through its cadre or its sympathizers/supporters. Since LTTE has not come forward to claim that it had no hand in organizing the above-referred demonstration. The Tribunal would be justified in inferring that the rally was organized at its behest and the speech made during the rally had its blessings.

To accuse Indian Army of indulging in sexual assaults against Tamil womenfolk living in Sri Lanka and committing ethnic carnage there is certainly an 'unlawful activity' since it causes or at least is intended to cause disaffection against India. The persons listening to such accusations are likely to form a serious negative opinion with respect to the moral and character of Indian Army, which, in turn, is bound to cause disaffection against India as a country. There is no evidence before the Tribunal that the accusations made by Thiru Seeman are correct. No one has come forward to justify these wild allegations. If it is falsely alleged that the Army of a country committed acts of rape of womenfolk and ethnic carnage in another country, it is likely to give rise to hatred against the country to which that army belongs. The accusations made in the above-referred demonstrations against Indian Army were general in nature, instead of being confined to a few unruly elements amongst the army men who went to Sri Lanka as part of Indian Peace Keeping Force Indian Army is a pride of the nation and any attempt to portray it as a force indulging in heinous acts such as rapes and ethnic carnage is bound to tarnish the image of the country as a whole. Accusing the force in general, of committing such heinous crimes is bound to give rise to hatred in the minds of those innocent persons who are gullible enough to believe such wild and unsubstantiated allegations.

29. I agree with Mr. Vaiko, General Secretary of MDMK, that giving speeches in support of Sri Lanka Tamilians or condemning the acts of atrocities, if any, committed against them in Sri Lanka cannot be objected to and does not constitute an unlawful activity. The natural sympathy amongst people of Tamil Nadu, for the Tamils in Sri Lanka needs to be understood and accepted by all of us, including Government of India and Government of Tamil Nadu. The outrage in Tamil Nadu, leading to protests and demonstrations to express solidarity with Sri Lankan Tamils and criticize the activities alleged to have been committed against them needs to be viewed in a correct perspective and cannot be a ground for banning an organization as 'an unlawful association'. But, to accuse Indian Army of committing heinous crimes, such as, rapes and ethnic carnage without even attempting to substantiate those allegations, is certainly an act intended to cause disaffection against India as a country because if the image of Indian Army, in general, is sullied in such a manner, it is bound to tarnish the image of India as a country and thereby give rise to disaffection against it. In fact, the whole objective of making such wild

unsubstantiated allegations against Indian Army seems to be an act intended to bring India as a country into disrepute and invite hatred against it.

30. Mr. Vaiko submitted that Tamils in India are aggrieved and deeply hurt on account of the serious atrocities have been committed against Tamilians in Sri Lanka where a large number of Sri Lankan Tamils have been brutally killed by Sri Lanka Army. If it is true, I agree with him that criticizing and condemning such acts and even supporting LTTE to the extent it counters such atrocities would not constitute an unlawful activity within the meaning of Section 2(o) of the Act. But, there can be absolutely no justification for condemning Indian Army which went to Sri Lanka as a Peace Keeping Force by accusing it of rape of Tamil womenfolk and ethnic carnage, without substantiating those allegations.

31. It has come in the deposition of PW-6 R. Rajbabu that on 12.06.2010, he noticed a gap of 2.5 metre broken rail and a crater of 3 feet depth on the railway track on Trichy/Chennai railway line. A pamphlet was also found on the spot, which condemned not only the visit of Sri Lankan President to India, but also the Indian Government and Tamil Nadu Government for supporting the annihilation of Tamil race. Criticizing and opposing the visit of Sri Lankan President to India is not an unlawful activity. But, besides condemning the visit, this pamphlet also accuses Government of India and Government of Tamil Nadu for supporting the killing of Tamilians in Sri Lanka. There is no evidence of Government of India or Government of Tamil Nadu having supported killing of Tamil population in Sri Lanka. Therefore, to accuse Indian Government and Government of Tamil Nadu of supporting such killings is an act intended to cause disaffection against India, particularly amongst Tamil populace in India and abroad. Anybody coming across against such a pamphlet and believing allegation made therein to be true, is bound to form a negative impression against India as a country for supporting killing of innocent civilians in Sri Lanka. The pamphlet purports to have been written by persons, who described themselves as "Prabhakaran younger brothers". Prabhakaran being the late leader of LTTE, and the organization having not come forward to disown the incident and the pamphlet left at the spot, the logical inference would be that the pamphlet was thrown by LTTE cadre, who also committed the act of breaking the railway line and digging a crater on the railway track. An act of this nature is bound to attract wide publicity on account of very serious nature of the act of breaking railway line and digging a crater on railway track. The obvious purpose of the act, therefore, seems to give publicity to the accusation made in the pamphlet thrown on the spot, thereby creating negative feelings against Government of India and Government of Tamil Nadu. Such an act constitutes 'unlawful activity' within the meaning of Section 2(o) of the Act.

32. The deposition of PW-3 G. Rengasamy and PW-5 Rajeev Gandhi would show that three members of LTTE cadre, namely, V. Chandrakanthan Nagarasa @ Satheesh @ Tamil @ Tamil Selvan, Subramaniam Arulkulasingham @ Ramesh @ Myndhan @ Siva and Selvan @ Selvarasa had tried to smuggle detonators from India to Sri Lanka for use of LTTE. The detonators were purchased by Mr. Subramaniam (accused No. 2) and Selvarasa (accused No. 3) from nearby stone quarries, at the instance of one Seelan, who was a French National, In-charge of LTTE in France and were handed over to accused No.1 for being kept in the bakery in which he was working at Trichy. As many as 1500 ordinary detonators and 200

electric detonators were seized from the accused Nagarasa, in the presence of two public witnesses.

In their confessional statement, all the three accused admitted that they were members of LTTE cadre and had come to India to procure ammunition for use of LTTE to Sri Lanka. It is true that no attempt was made by the Investigating Officer of the case to get their statement recorded before a Magistrate. But, the Tribunal is not a Criminal Court and is not holding a criminal trial, Section 25 of Evidence Act, which renders the confession recorded before a police officer inadmissible in evidence, does not *ipso facto* apply to the proceedings before it. Section 9 of the Act expressly stipulates that the Tribunal, in holding any inquiry under sub-section (3) of Section 4 shall, as far as may be, apply the procedure laid down in the Code of Civil Procedure for investigation of claims.

In Jamaat-E-Islami Hind (supra), Supreme Court held that the inquiry by the Tribunal is in the nature of adjudication of a *lis* between two parties, the outcome of which depends on the weight of the material produced by them. It was further held that such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability was approved by the Apex Court to be the pragmatic test applicable in the context. The Apex Court held that the procedure to be followed by the Tribunal should be such which enables it to assess the credibility of conflicting material on points and controversy. The Apex Court held that the material before the Tribunal need not be confined only to legal evidence in the sense and the scrutiny before the Tribunal is not a criminal trial. The Tribunal, however, is expected to assess the material produced before it and satisfy itself of its credibility. Therefore, even the confession made to a police officer would constitute material which the Government could have considered while banning LTTE and the Tribunal also can take into consideration while passing an order under sub-section (3) of Section 4 of the Act, after verifying the statement from the person to whom it was made. Since the police officers, who recorded the confessional statement of these three persons of LTTE cadre, have been examined before the Tribunal, the contemporaneous documents, evidencing the confession have been produced and more importantly, the confessions find corroboration from the recovery of detonators, I see no good reason to exclude this material from consideration. Since LTTE has not come forward to file any reply/objections, the evidence produced before the Tribunal in this regard remains virtually unchallenged and there is no occasion for comparative assessment of the material of two adverseries. Therefore, the Government has been able to show that the members of LTTE cadre had come to India to smuggle ammunition to Sri Lanka for use of LTTE. I have earlier held that the larger objective of LTTE is to form an independent State by including parts of Indian territory in it. Therefore, the act of smuggling ammunition into Sri Lanka by LTTE cadres is an action which is intended ultimately to bring about cession of a part of the territory of India, the objective of LTTE being to merge parts of Indian territory with certain parts of Tamil speaking areas of Sri Lanka. The Government has thus been able to show that LTTE cadres are engaged in unlawful activity in India by smuggling ammunition from India to Sri Lanka.

33. In his written submissions, Mr Vaiko has submitted that in *People's Union for Civil Liberties and Anr v. Union of India*; (2004) 9 SCC 580, Supreme Court had taken a view that mere expression of sympathy for Tamil in Sri Lanka for whom LTTE had become sole representative does not amount to supporting as terrorist organization and Section 29 of Prevention of Terrorism Act (POTA) would not cover any expression or activity which does not have the element or consequence of furthering or encouraging terrorist activity or facilitating its commission. He submitted that mere expression of sympathy or arranging a meeting which does not intent or design and does not have the effect to further the activities of any terrorist organization or commission of terrorist acts do not fall within the mischief of Section 21 of POTA.

The view taken by the Apex Court was the offences under Section 20 or 21 or 22 needs positive inference that a person has acted with intent of furthering or encouraging terrorist activity or facilitating its commission. It was held that these Sections are limited only to those activities that have the intent of encouraging, furthering, promoting or facilitating the commission of terrorist activities. This judgment seems to have no application to the issues involved in the present inquiry. There can hardly be any dispute with the proposition that merely sympathizing with LTTE or supporting the cause of Sri Lanka Tamilians espoused by it does not constitute any unlawful activity as defined in the Act. But, if the members of the cadre indulge into activities which are intended to bring about cession of a part of a territory of India or to cause disaffection against India that would certainly amount to an unlawful activity within the Section 2(o) of the Act.

34. In his written submission, Mr. Vaiko submitted that this is not the objective of LTTE to establish an independent sovereign State for all Tamils living in different parts of the world and it wants an independent State only for those Tamils living in Sri Lanka. He further stated that this is not the objective of LTTE to take any part of territory belonging to India. However, I am unable to accept this contention for the reason that LTTE has not come forward to take such a stand and in the absence of the association coming forward to dispute the claim, the material produced by the Government to show that the ultimate objective of this organization is to create an independent State comprising not only Tamil speaking parts of Sri Lanka, but also certain parts of Tamil Nadu which are considered to be the traditional homeland for Tamils and Muslims, cannot be rejected. Mr Vaiko also submitted that way back on 14.05.1976, a conference of Akhilla Ilankai Tamil United Front, held at Vattukottai had passed a resolution stating therein that the State of Tamil Eelam will consist of the people of Northern and Eastern provinces of Sri Lanka though Tamil speaking people living in another parts of the world, may opt for citizenship of Tamil Eelam. However, there is no material on record to show that the resolution, relied upon by Mr Vaiko, was endorsed by LTTE. As noted earlier, the organization has not come forward to declare before the Tribunal that it does not want cession of any part of India or secession of a part of Indian territory from the Union and the earlier Tribunals have not accepted its contention that Tamil Eelam is confined only to certain Tamil speaking areas in Sri Lanka. Mr Vaiko submitted that a map of Tamil Eelam, which used to be displayed on the Dais during address by LTTE leader Prabhakaran, did not include any part of territory of India and this map is the official map of Transnational Government of Tamil Eelam, making it quite clear that the area

of Tamil Eelam comprises only territorial area within the Island of Sri Lanka. Since Mr Vaiko does not represent LTTE, I am unable to accept his submission as the stand of LTTE before the Tribunal. Nothing prevented LTTE from coming forward and taking the stand canvassed by Mr Vaiko.

35. Had the LTTE come forward in a proper manner to participate in the inquiry, declared that (a) it has no connection with TNLA, TNLf or any other organizations advocating cession of a part of Indian Territory or secession of an Indian territory from the Union, (b) does not want any Indian territory to form part of Tamil Eelam, (c) did not accuse Indian Army of raping Tamil women and indulging in ethnic carnage in Sri Lanka; and (d) did not accuse Indian Government and Government of Tamil Nadu of supporting killing of innocent Tamils in Sri Lanka, there could have been justification to say that it is not or has ceased, to be an 'unlawful association' within the meaning of Section 2(p) of the Act. But, that has not happened during the course of this inquiry. All the allegations against the organization remain uncontroverted, the evidence produced before the Tribunal remains unrebutted, and there has no occasion to weigh the evidence produced by two contesting parties and decide evidence of which party outweighs the evidence of the other. The evidence which has been produced by the Central Government and the Court of Tamil Nadu before this Tribunal cannot be said to be so intrinsically unbelievable and unreliable as to warrant rejection even in the absence of being controverted by the opposite party i.e. LTTE.

LTTE is one of the organizations listed in the Schedule meaning thereby that it is a terrorist organization within the meaning of the Act. Section 2(m) of the Act defines 'Terrorist Organization' to mean an organization listed in the Schedule or an organization operating under the same name as an organization so listed. Section 35 (1)(c) empowers the Government to remove an organization from the Schedule. Section 36 provides for an application being made to the Central Government to exercise its powers to remove an organization from the Schedule and such an application can be made either by the organization or by any person affected by the inclusion of the organization in the Schedule as a 'terrorist organization'. In case such an application is rejected, the applicant may seek a review by the Review Committee to be constituted by the Central Government under Section 37(1) of the Act. The Chairman of the Review Committee is to be a person who is or has been a Judge of a High Court. The Review Committee is competent to allow an application for review against rejection and to remove an organization from the Schedule. If such an order is made by the Review Committee, the Central Government is obliged to make an order removing the organization from the Schedule. However, no application has so far been made by the LTTE or by any person affected by its inclusion in the Schedule, for removing the name of the organization from the list. Consequently, the LTTE continues to be a 'terrorist organization'.

36. Prior to issue of Notification dated 14.5.2012, LTTE was declared 'unlawful association', vide Notification dated 14.5.2010. Three members of LTTE Cadre namely Nagarasa, Subramaniyam and Selvarasa, who were attempting to smuggle explosives to Sri Lanka for use of LTTE, were arrested thereafter on 20.6.2010 and ammunition was recovered from them. The rail line was found broken and the

pamphlet condemning the Indian Government and Tamil Nadu Government was recovered on 12.6.2010. Inflammatory speech by Thiru Seeman was delivered at Chennai on 10.7.2010. All this happened after issue of notification dated 14.5.2010. Two other members of LTTE Cadre namely Jesuraja and Ganesan were arrested and detonators were recovered from them on 14.8.2011, much after notification dated 14.5.2010 and the ban on the organization being confirmed vide order dated 12.11.2010. These facts and circumstances clearly indicate that LTTE continues to survive and persist with its activities, though its cadre strength may have dwindled on account of the military setback suffered by it in Sri Lanka. The Central Government, therefore, had sufficient ground, in the light of the material available to it, to continue the ban on LTTE, so as to ensure that the organization does not gain momentum and does not spread its activities, taking advantage of absence of the ban on it.

37. For the reasons stated hereinabove, I am of the considered view that there was enough, cogent and relevant material before the Central Government, giving rise to sufficient cause for declaring the LTTE to be an 'unlawful association' within the meaning of Section 2(p) of the Act. The declaration made by the Central Government vide Notification dated 14.5.2012 published in Part-II, Section 3 Sub Section (ii) of the Gazette of India (Extraordinary), declaring the Liberation Tigers of Tamil Eelam (LTTE) to be an unlawful association is hereby confirmed.

November 7, 2012

(JUSTICE V.K. JAIN)
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

[F. No. I-11034/1/2012-IS-I]

DHARMENDRA SHARMA, Jt. Secy.